

HOUSE BILL NO. 466

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CHENAULT

Introduced: 2/19/02

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for regulation of private investigators and private investigator**
2 **agencies; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 08 is amended by adding a new chapter to read:

5 **Chapter 85. Private Investigators and**

6 **Private Investigator Agencies.**

7 **Article 1. Board of Private Investigators.**

8 **Sec. 08.85.010. Board established.** There is established the Board of Private
9 Investigators. The board consists of five members appointed by the governor as
10 follows:

11 (1) two individuals who are licensed as private investigators or private
12 investigator agencies under this chapter and who have at least five years of experience
13 in this state as a private investigator or private investigator agency;

14 (2) two peace officers; and

1 (3) one public member.

2 **Sec. 08.85.020. General duties.** In addition to the powers and duties
3 conferred on the board by AS 08.01, the board shall

4 (1) regulate private investigators and private investigator agencies
5 under this chapter;

6 (2) adopt regulations to implement this chapter, including regulations
7 that establish

8 (A) standards of professional conduct or practice for private
9 investigators and private investigator agencies licensed under this chapter; and

10 (B) continuing education requirements that must be met before
11 renewal of a license issued under this chapter.

12 **Sec. 08.85.030. Investigation of applicants.** (a) When investigating an
13 applicant for licensure under this chapter, the department may require any information
14 and documentation that reasonably relates to the need to determine whether the
15 applicant meets the licensure criteria. During the investigation, the department shall
16 solicit comments about the applicant from the chief law enforcement officer of the
17 municipality in which the applicant's agency or employer is located. The department
18 shall also request the Department of Public Safety to compare the fingerprints
19 submitted with an application to national and state fingerprint records available under
20 AS 12.62.

21 (b) The board may, by regulation, require that fingerprints of licensees be
22 periodically reprocessed to identify criminal convictions subsequent to licensure under
23 this chapter.

24 (c) A summary of the information acquired under this section, to the extent
25 that it is public information, may be forwarded by the department or the board to the
26 applicant's employer.

27 **Sec. 08.85.040. Immunity for complainants.** An action may not be brought
28 against a person for damages resulting from a complaint filed in good faith with the
29 board or the department about a person licensed under this chapter.

30 **Sec. 08.85.050. Fees.** Under AS 08.01.065, the department shall establish
31 fees for private investigators and private investigator agencies for the following:

- 1 (1) filing an examination or licensing application;
- 2 (2) examination fee;
- 3 (3) investigation of application;
- 4 (4) initial license;
- 5 (5) filing a reexamination application;
- 6 (6) duplicate license;
- 7 (7) license certificate;
- 8 (8) license card;
- 9 (9) renewal of a license;
- 10 (10) delinquent renewal of a license;
- 11 (11) fingerprint investigation;
- 12 (12) review under AS 08.85.120 or 08.85.130.

13 **Sec. 08.85.060. Administrative Procedure Act.** Regulations and
 14 proceedings under this chapter are governed by AS 44.62 (Administrative Procedure
 15 Act).

16 **Article 2. Private Investigators.**

17 **Sec. 08.85.100. License required.** (a) Unless exempt from licensure under
 18 AS 08.85.900 or operating in the state under the provisions of AS 08.85.120, a person
 19 may not perform the functions and duties of a private investigator without a private
 20 investigator license issued under this chapter.

21 (b) A person who knowingly violates this section is guilty of a class A
 22 misdemeanor.

23 **Sec. 08.85.110. License qualifications for private investigators.** An
 24 applicant must meet the following minimum requirements to obtain a private
 25 investigator license:

- 26 (1) be at least 18 years of age;
- 27 (2) be a citizen or resident alien of the United States;
- 28 (3) not have been convicted of a crime in any jurisdiction unless the
 29 board determines that the applicant's particular crime does not directly relate to the
 30 capacity to perform the duties of a private investigator;
- 31 (4) be employed by or have an employment offer from a private

1 investigator agency or be licensed as a private investigator agency;

2 (5) submit a set of the applicant's fingerprints;

3 (6) pay the required nonrefundable fee for each application; and

4 (7) submit a fully completed application that includes proper
5 identification on a form prescribed by the department for each private investigator
6 agency that employs or has offered to employ the applicant.

7 **Sec. 08.85.120. Out-of-state private investigators operating across state**
8 **lines.** (a) Private investigators whose duties require them to operate across state lines
9 may operate in this state for up to 30 days per year if they are properly registered and
10 certified in another state with training and certification requirements that the board
11 finds are at least as stringent as the requirements of this state.

12 (b) A person may not operate in this state under (a) of this section before
13 receiving the board's written finding that the other state's requirements are at least as
14 stringent as the requirements of this state.

15 (c) Persons operating in this state under (a) of this section may not solicit
16 business in this state or represent themselves as being licensed in this state.

17 **Sec. 08.85.130. Licensure by endorsement.** Notwithstanding AS 08.85.110,
18 the board may grant a private investigator license to a person from another state that
19 the board determines has selection, training, and other requirements at least as
20 stringent as those required by this chapter, if the person holds a valid license,
21 registration, identification, or similar card issued by the other state, applies on a form
22 prescribed by the department, and pays the appropriate application fee.

23 **Sec. 08.85.140. License cards.** (a) The board shall issue a license card to
24 each person licensed as a private investigator under this chapter.

25 (b) A license card may not be used as security clearance.

26 (c) A licensed private investigator shall carry the license card when
27 performing the duties of a private investigator and shall exhibit the card on request.

28 **Sec. 08.85.150. Transfer of employment prohibited.** A licensed private
29 investigator may not begin employment with a private investigator agency that was
30 not named on the licensee's previous application for licensure without applying for and
31 receiving a new private investigator license.

1 **Article 3. Private Investigator Agencies.**

2 **Sec. 08.85.200. License required.** (a) Unless exempt from licensure under
3 AS 08.85.900, a person may not operate a private investigator agency without a
4 private investigator agency license issued under this chapter.

5 (b) A person who knowingly violates this section is guilty of a class A
6 misdemeanor.

7 **Sec. 08.85.210. License qualifications for private investigator agencies.** In
8 order to obtain a license as a private investigator agency, the applicant, or, in the case
9 of a partnership of any kind, each partner, or, in the case of a corporation, the
10 qualifying agent, must

11 (1) meet the minimum requirements to obtain a license as a private
12 investigator;

13 (2) pass an examination determined by the board to measure the
14 person's knowledge and competence in the private investigator agency business; and

15 (3) file with the department a

16 (A) surety bond in the sum of \$10,000 conditioned to recover
17 against the principal and its servants, officers, agents, and employees by reason
18 of the agency's wrongful or illegal acts in conducting the business licensed
19 under this chapter; the bond shall be made payable to the state, and a person
20 injured by the principal or its servants, officers, agents, or employees has the
21 right to sue directly on the bond in the person's own name; or

22 (B) certificate of insurance evidencing comprehensive general
23 liability coverage of at least \$25,000 for bodily or personal injury and \$25,000
24 for property damage.

25 **Sec. 08.85.220. License not transferable.** An agency license issued under
26 AS 08.85.210 may not be assigned or transferred.

27 **Sec. 08.85.230. Limitations on agency license's name.** A license to own or
28 operate a private investigator agency may not be issued to an applicant if the name of
29 the agency portrays the agency as a public law enforcement agency or in association
30 with a public law enforcement agency, or includes the word "police."

31 **Sec. 08.85.240. License certificate.** (a) The board shall issue a license

1 certificate to each licensed private investigator agency.

2 (b) Within 72 hours after receipt of the license certificate, the licensee shall
3 post and display the certificate in a conspicuous place in the principal office of the
4 licensee within the state.

5 (c) A person holding a license certificate may not knowingly post the license
6 certificate upon premises other than those described in the license certificate or
7 materially alter a license certificate.

8 (d) Every advertisement by a licensed private investigator agency that solicits
9 or advertises business must contain the name of the licensee, the address of record,
10 and the license number as that information appears in the records of the board.

11 (e) A licensed private investigator agency shall notify the board within 30
12 days of any change in the licensee's officers or directors or any material change in the
13 information furnished or required to be furnished to the board.

14 **Sec. 08.85.250. Required notice of certain occurrences.** (a) A private
15 investigator agency shall notify the board within 30 days after the death or termination
16 of employment of any employee who is a licensed private investigator by returning the
17 license to the board with the word "terminated" written across the face of the license,
18 the date of termination, and the signature of the principal of the private investigator
19 agency.

20 (b) A private investigator agency shall notify the board within 72 hours and
21 the chief law enforcement officer of the municipality in which the agency is located
22 immediately upon receipt of information affecting a licensed private investigator's
23 continuing eligibility to hold a license under this chapter.

24 **Sec. 08.85.260. Employment of unlicensed investigators prohibited.** A
25 private investigator agency may not employ a person to perform the duties of a private
26 investigator unless the employee is licensed under this chapter.

27 **Article 4. Prohibited Acts; Disciplinary Actions.**

28 **Sec. 08.85.800. Display of firearms prohibited while soliciting clients.** A
29 licensee, employee or agent of a licensee, or anyone accompanying a licensee,
30 employee, or agent may not display a firearm while soliciting a client.

31 **Sec. 08.85.810. Use of certain words prohibited.** A person licensed under

1 this chapter may not possess or use any vehicle or equipment displaying the words
 2 "police" or "law enforcement officer" or having any sign, shield, marking, accessory,
 3 or insignia that indicates that the equipment or vehicle belongs to a public law
 4 enforcement agency.

5 **Sec. 08.85.820. Grounds for disciplinary action.** The following acts by a
 6 person licensed under this chapter are prohibited and constitute grounds for
 7 disciplinary action under AS 08.01.075:

8 (1) knowingly violating a provision of this chapter or a regulation
 9 adopted under this chapter;

10 (2) knowingly making a material misstatement or omission in the
 11 application for or renewal of a license, including falsifying requested identification
 12 information;

13 (3) carrying a firearm in the performance of private investigator duties
 14 without having a valid license or permit to carry the firearm;

15 (4) failing to return immediately upon demand agency identification,
 16 badges, or other items issued to the private investigator by an employer;

17 (5) making any statement that would reasonably cause another person
 18 to believe that the private investigator is a sworn peace officer;

19 (6) divulging confidential information obtained in the course of any
 20 investigation to which the licensee was assigned;

21 (7) acceptance of employment that is adverse to a client or former
 22 client and relates to a matter about which a licensee has obtained confidential
 23 information by reason of or in the course of the licensee's employment by the client;

24 (8) conviction of a misdemeanor or felony or the commission of any
 25 act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a
 26 crime or not; if the act constitutes a crime, conviction in a criminal proceeding is not a
 27 condition precedent to disciplinary action; upon a conviction, however, the judgment
 28 and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of
 29 the license holder of the crime described in the indictment or information, and of the
 30 person's violation of the statute on which it is based; for the purposes of this
 31 paragraph, conviction includes all instances in which a plea of guilty or nolo

1 contendere is the basis for the conviction and all proceedings in which the sentence or
2 imposition of the sentence has been deferred or suspended;

3 (9) advertising in a false, fraudulent, or misleading manner;

4 (10) incompetence or negligence that results in injury to a person or
5 that creates an unreasonable risk that a person may be harmed;

6 (11) suspension, revocation, or restriction of the individual's license to
7 practice as a private investigator by competent authority in any state, federal, or
8 foreign jurisdiction; a certified copy of the order, stipulation, or agreement is
9 conclusive evidence of the revocation, suspension, or restriction;

10 (12) failure to cooperate with the board or the department by

11 (A) not furnishing necessary papers or documents requested for
12 purposes of conducting an investigation for disciplinary action, denial,
13 suspension, or revocation of a license under this chapter;

14 (B) not furnishing in writing a full and complete explanation
15 covering the matter contained in a complaint filed with the department or the
16 board; or

17 (C) not responding to a subpoena issued by the board or
18 department, whether or not the recipient of the subpoena is the accused in the
19 proceeding;

20 (13) failure to comply with an order issued by the board or department;

21 (14) aiding or abetting an unlicensed person to practice as a private
22 investigator or private investigator agency if a license is required;

23 (15) misrepresentation or fraud in any aspect of a private investigation
24 or operation of a private investigator agency;

25 (16) failure to adequately supervise employees to the extent that the
26 public health or safety is at risk;

27 (17) interference with an investigation or disciplinary proceeding by
28 wilful misrepresentation of facts before the board or the board's authorized
29 representative, or by the use of threats or harassment against a client or witness to
30 prevent the client or witness from providing evidence in a disciplinary proceeding or
31 another legal action;

- 1 (18) attempting to assign or transfer a license issued under this chapter;
- 2 (19) assisting a client to locate, trace, or contact a person when the
- 3 investigator knows that the client is prohibited by court order from harassing or
- 4 contacting the person whom the investigator is being asked to locate, trace, or contact;
- 5 (20) failure to maintain bond or insurance;
- 6 (21) inability to practice as a private investigator with reasonable skill
- 7 and safety to the public by reason of a physical or mental condition;
- 8 (22) failure to have a qualifying principal in place; or
- 9 (23) being certified as not in substantial compliance with a support
- 10 order under AS 25.27.244(a).

11 **Article 5. General Provisions.**

12 **Sec. 08.85.900. Exemptions.** The licensing requirements of this chapter do

13 not apply to

- 14 (1) a person who is employed exclusively or regularly by one
- 15 employer and performs investigations solely in connection with the affairs of that
- 16 employer, if the employer is not a private investigator agency;
- 17 (2) an officer or employee of the United States or of this state or a
- 18 political subdivision thereof, while engaged in the performance of the officer's official
- 19 duties;
- 20 (3) a person engaged exclusively in the business of obtaining and
- 21 furnishing information about the financial rating of persons;
- 22 (4) an attorney at law, while performing the attorney's duties as an
- 23 attorney;
- 24 (5) a licensed collection agency or its employee, while acting within
- 25 the scope of that person's employment and making an investigation incidental to the
- 26 business of the agency;
- 27 (6) insurers, agents, and insurance brokers licensed by the state, while
- 28 performing duties in connection with insurance transacted by them;
- 29 (7) a bank subject to the jurisdiction of the Department of Community
- 30 and Economic Development or the comptroller of currency of the United States, or a
- 31 savings and loan association subject to the jurisdiction of this state or the Federal

1 Home Loan Bank Board;

2 (8) a licensed insurance adjuster performing the adjuster's duties within
3 the scope of the adjuster's license;

4 (9) a secured creditor engaged in the repossession of the creditor's
5 collateral, or a lessor engaged in the repossession of leased property in which it claims
6 an interest;

7 (10) persons who are forensic scientists, accident reconstructionists, or
8 other persons who perform similar functions and do not hold themselves out to be
9 investigators in any other capacity; or

10 (11) a person solely engaged in the business of securing information
11 about persons or property from public records.

12 **Sec. 08.85.910. Regulatory provisions exclusive.** (a) The provisions of this
13 chapter relating to the licensing for regulatory purposes of private investigators and
14 private investigator agencies are exclusive. A political subdivision of this state may
15 not enact any laws or rules licensing for regulatory purposes such persons, except as
16 provided in (b) and (c) of this section.

17 (b) This section may not be construed to prevent a political subdivision of this
18 state from levying a business fee, business and occupation tax, or other tax upon
19 private investigator agencies if the fee or tax is levied by the political subdivision on
20 other types of businesses within its boundaries.

21 (c) This section may not be construed to prevent this state or a political
22 subdivision of this state from licensing for regulatory purposes private investigator
23 agencies with respect to activities that are not regulated under this chapter.

24 **Sec. 08.85.990. Definitions.** In this chapter,

25 (1) "board" means the Board of Private Investigators established under
26 this chapter;

27 (2) "department" means the Department of Community and Economic
28 Development;

29 (3) "forensic scientist" or "accident reconstructionist" means a person
30 engaged exclusively in collecting and analyzing physical evidence and data relating to
31 an accident or other matter and compiling such evidence or data to render an opinion

1 of likely cause, fault, or circumstance of the accident or matter;

2 (4) "principal" of a private investigator agency means the owner or
3 manager appointed by a corporation;

4 (5) "private investigator" means a person who is licensed under this
5 chapter and is employed by a private investigator agency for the purpose of
6 investigation, escort or bodyguard services, or property loss prevention activities;

7 (6) "private investigator agency" means a person or entity licensed
8 under this chapter and engaged in the business of detecting, discovering, or revealing
9 one or more of the following:

10 (A) crime, criminals, or related information;

11 (B) the identity, habits, conduct, business, occupation, honesty,
12 integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity,
13 movement, whereabouts, affiliations, associations, transactions, acts,
14 reputation, or character of any person or thing;

15 (C) the location, disposition, or recovery of lost or stolen
16 property;

17 (D) the cause or responsibility for fires, libels, losses,
18 accidents, or damage or injury to persons or to property;

19 (E) evidence to be used before a court, board, officer, or
20 investigative committee;

21 (F) detecting the presence of electronic eavesdropping devices;

22 or

23 (G) the truth or falsity of a statement or representation;

24 (7) "qualifying agent" means an officer or manager of a corporation
25 who meets the requirements set out in this chapter for obtaining a private investigator
26 agency license.

27 * **Sec. 2.** AS 08.01.010 is amended by adding a new paragraph to read:

28 (37) Board of Private Investigators (AS 08.85).

29 * **Sec. 3.** AS 08.03.010(c) is amended by adding a new paragraph to read:

30 (22) Board of Private Investigators (AS 08.85.010) -- June 30, 2006.

31 * **Sec. 4.** AS 44.62.330(a) is amended by adding a new paragraph to read:

1 (60) Board of Private Investigators.

2 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 INITIAL BOARD MEMBERS. Notwithstanding AS 08.85.010, enacted by sec. 1 of
5 this Act, the persons appointed to the Board of Private Investigators to fill the seats designated
6 for private investigators or private investigator agencies licensed in this state are not required
7 to be licensed in this state until July 1, 2003.

8 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 REGULATIONS. The Board of Private Investigators established under this Act and
11 the Department of Community and Economic Development may proceed to adopt regulations
12 to implement this Act. A regulation adopted under the authority of this section takes effect
13 under AS 44.62 (Administrative Procedure Act) but not before the effective date of the law
14 implemented by the regulation.

15 * **Sec. 7.** Except as provided in sec. 8 of this Act, this Act takes effect immediately under
16 AS 01.10.070(c).

17 * **Sec. 8.** AS 08.85.100, 08.85.200, and 08.85.260, enacted by sec. 1 of this Act, take effect
18 July 1, 2003.